



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,224	07/12/2003	Donald M. Besemer	1067.1E (32US6)	7023

33743 7590 07/21/2004

CHIEF INTELLECTUAL PATENT COUNSEL  
AFFYMETRIX, INC.  
3380 CENTRAL EXPRESSWAY  
SANTA CLARA, CA 95051

EXAMINER

REDDING, DAVID A

ART UNIT PAPER NUMBER

1744

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

Address : COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

*eb*

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
---------------------------------	-------------	---	---------------------

EXAMINER
----------

ART UNIT	PAPER
----------	-------

20040610

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 28,30,34,35,37,38,42,44,46,48,49,51,54,93-106, are drawn to an apparatus, classified in class 435, subclass 283.1.
- II. Claims 66-70,73-78, are drawn to a method, classified in class 435, subclass 68.1.

Inventions of group II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as on involving antigen-antibody assay.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. McGarrigle on 5/28/2004 a provisional election was made with traverse to prosecute the invention of group II, claims 66-70,73-78. Affirmation of this election must be made by applicant in replying to this Office action. Claims 28,30,34,5,37,38,42,44,46,48,49,51,54,93-106 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. McGarrigle on 6/10/2004.

The application has been amended as follows:

- a) Cancel non-elected claims 28,30,34,35,37,38,42,44,46,48,49,51,54,93-106.
- b) Claim 75, line 4, delete "i" and replace with --is--.

#### ***Allowable Subject Matter***

(Zuckermann et al.) discloses immobilizing polypeptides on solid-phase particles (beads) contained within a reaction chamber and contacting the proteins with liquid reagents and mixing the contents of the chamber with a gas (bubbles). There is no teaching or suggestion of immobilizing the sidewalls of the chamber.

Art Unit: 1744

USP 4,610,847 (Hood et al.) discloses a method of immobilizing a polypeptide on a substrate (190, Figures 6A,6B) contained within a reaction chamber (34). However, the reagents are introduced into the chamber (34) as a gas or vapor (col.27, lines 23-38) and no bubbles are provided in a fluid in the chamber. USP 5,384,261 (Winkler et al.) discloses immobilizing polypeptides or DNA on a substrate. However, there is no teaching or suggestion of using a gas or bubbles in the reaction method. USP 5,322,799 (Miller et al.) fails to teach or suggest immobilizing a polynucleotide, polypeptide, or polysaccharide on a surface of the reaction chamber. USP 5,436,129 (Stapleton) fails to teach or suggest adding gas or bubbles to the reaction chamber.

### ***Interference***

The request for interference with United States Patent No. 6,513,968 (Schembri), filed on January 27, 2004 is acknowledged.

All claims are allowable. However, due to a potential interference, *ex parte* prosecution is SUSPENDED FOR A PERIOD OF 6 MONTHS from the date of this letter. Upon expiration of the period of suspension, applicant should make an inquiry as to the status of the application.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Redding whose telephone number is 571-272-1276. The examiner can normally be reached on Mon.-Fri. 6:00 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.A.R.

  
DAVID A. REDDING  
PRIMARY EXAMINER  
GROUP 1200